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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 95-185
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	

COMMENTS OF OMNIPOINT CORPORATION

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SUMMARY

Omnipoint strongly supports the Commission's tentative conclusion to adopt a national mandatory "bill and keep" approach to compensation for interconnection between CMRS and LEC providers. "Bill and keep" is the only provisional solution to mutual compensation issues that assures the rapid introduction of PCS competition. During the introduction of new wireless and other competitive services, the Commission and carriers can better assess what long-term solution, if any, should replace "bill and keep" to assure reciprocal compensation.

A "bill and keep" scheme provides several significant public benefits. Perhaps most important, it provides CMRS providers immediate and reasonable interconnection to the PSTN. It also significantly reduces transactions and administrative costs for both carriers. The benefits for small business, and PCS entrepreneurs, will be particularly helpful to assure the Commission's objectives of promoting diversity and small business market entry.

Omnipoint believes that "bill and keep" should also apply to the costs of tandem switching and transport costs. A "bill and keep" scheme that fails to include these costs diminishes the administrative simplicity of the scheme for no apparent public benefit. Similarly, the costs of network interfacing should be borne equally by both carriers.

The Commission has authority to adopt "bill and keep" as a national compensation scheme. The federal priority for rapid nationwide and regional PCS demands that interconnection issues be settled on a federal level. Otherwise, state resolution of the issue will produce slow and uneven interconnection, which PCS providers and the public cannot afford. In addition, Sections 332 and 2(b) of the Communications Act provide the Commission with ample statutory authority to adopt a national "bill and keep" solution. The 1996 Telecommunications Act, with its emphasis on encouraging competitive telecommunications services, fully supports the Commission's preemptive authority.

Finally, CMRS operators, just like LECs, have a right to recover access charges from IXCs for the termination of traffic on the CMRS network. Where that IXC traffic comes to the CMRS network through the LEC, both the LEC and the CMRS operator should share ratably the IXC access charge.

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Omnipoint Corporation ("Omnipoint") files these comments in response to the Commission's Notice of Proposed Rulemaking, FCC 95-505 ("NPRM") in the above-captioned proceeding.

As a Commercial Mobile Radio Services ("CMRS") provider in the New York MTA[1] and an active participant in the ongoing Block C auction, Omnipoint and its subsidiaries intend to provide wide-scale services traditionally offered only by the wireline carrier and so interconnection on fair and reasonable terms is essential. Omnipoint strongly endorses a mandatory national "bill and keep" approach to compensation for the termination of traffic between the incumbent local exchange carrier and CMRS operators, at least as the initial implementation of reciprocal compensation. Unlike any other compensation method to be developed, "bill and keep" permits CMRS operators to initiate local loop services immediately, while any other alternative will effectively block all new entrants for years.

"Bill and keep" may or may not be the best long-term solution to the compensation issues. However, in this case, the best may be the enemy of the good because a long-term

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1 Omnipoint Communications, Inc., a subsidiary of Omnipoint Corporation, holds the Block A PCS license for the New York MTA, call sign KNLF202.

solution for reciprocal compensation may take years to develop, implement, and enforce. In the meantime, "bill and keep" is the only viable option to the current situation, which is tremendously unfair for competitive entrants.

I. THE COMMISSION SHOULD ADOPT A NATIONAL INTERIM BILL AND KEEP COMPENSATION METHOD FOR CMRS-LEC INTERCONNECTION.

A. "Bill and Keep" is an Effective, Fair Interconnection Policy.

The Commission seeks comment on the tentative conclusion that interconnection rates for local switching facilities and connections to end users should be priced on a "bill and keep" basis. NPRM at ¶ 59. In particular, the Commission seeks comment on whether a bill and keep arrangement should be imposed pending the negotiation of a satisfactory interconnection arrangement between the LEC and the CMRS provider. NPRM at ¶ 75.

Omnipoint believes that there are at least seven reasons to favor a mandatory "bill and keep" interconnection policy:

1. *It Facilitates Rapid Deployment by PCS Operators*

One of the Commission's seminal goals for PCS is "to foster rapid creation of a competitive market to deliver . . . new mobile digital voice and data services." Memorandum Opinion and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 1309, ¶ 3 (1994). As the Commission has noted, "commercial mobile service interconnection with the public switched network will be an essential component in the successful establishment and growth of CMRS offerings." Second Report and Order, GN Dkt. No. 93-252, 9 FCC Rcd. 1411, ¶ 235 (1994). "Bill and keep" furthers those goals by minimizing avoidable time and effort spent by CMRS licensees negotiating for interconnection. Given the LECs' natural interest in deferring the entry of competition, any delay resulting from interconnection negotiations is a significant competitive tool for the LECs. However, with compensation issues effectively out of the negotiation, the interconnection arrangements can proceed more rapidly.

2. *It Provides PCS Operators with Interconnection on Fair Terms*

The Communications Act requires fair and just interconnection arrangements between the incumbent LEC and the CMRS entrant. 47 U.S.C. § 201(a) & (b) (interstate common carriers shall connect with other carriers on terms that are just and reasonable); 47 U.S.C. § 252(c)(2)(D) (incumbent LECs have duty to interconnect "on rates, terms, conditions that are just, reasonable and nondiscriminatory"). The Commission also requires the LEC to offer reasonable and nondiscriminatory interconnection and established a policy of "mutual compensation." At the same time, the Commission recognized that interconnection is an "essential component in the successful establishment and growth of CMRS offerings," requiring reasonable terms and conditions from the LEC. Second Report and Order, GN Dkt. No. 93-252, 9 FCC Rcd. 1411, ¶ 235 (1994).

Unfortunately, fair and mutual compensation has not been the history of interconnection between LECs and mobile service providers. This practice has endured because LECs enjoy both a monopoly for wireline local loop services and a duopoly in cellular service. As a result, even the best intentioned LECs have great incentive to delay interconnection and see the world from a monopoly perspective. With the unequal bargaining power between the LEC and a CMRS entrant, there is little chance that the LECs' practices will change in the near future.

"Bill and keep" corrects for this market imbalance by taking away the opportunity to use interconnection rates to thwart market competition brought on by CMRS entrants.

3. *It Reduces Transactions Costs*

"Bill and keep" avoids much of the costs of negotiating an interconnection arrangement by taking price, compensation methods, billing methods, etc. out of the process. In essence, "bill and keep" eliminates the need for billing record data exchange, network interface compatibility, and the clearinghouse and settlement functions required to ensure accurate billing data distribution and compensation. Because these costs and time delays would otherwise have to be incurred prior to the introduction of commercial service, "bill and keep" assures quicker introduction of competitive CMRS service. "Bill and keep" also eliminates the on-going administrative costs of maintaining one or more mutual compensation arrangements, including costs associated with accounting systems, billing, and recording minutes of use.

In addition, a compensation method requiring a settlement process inevitably leads to disputes. Carriers will disagree with each others' practices, including, methods of recording traffic usage, billing methods, and allocation of switch costs. The inherent difficulties in recording traffic on mobile networks only adds to these problems. Carriers will also need to select and pay for a common, independent clearing house. The resolution of all of these issues, which have not been adequately addressed by the wireless or wireline providers, will cost tremendous time and expense. In other countries that have implemented mutual compensation schemes between mobile and wirelines providers, the CMRS operator generally sets the rate to be charged for incoming calls from the LEC network, and the LEC collects that rate and turns it over to CMRS operator. Without "bill and keep" in this country, CMRS providers would be forced to demand similar compensation from the LEC and the process for establishing that compensation scheme will be long and contentious.

4. *It Implements Mutual Compensation*

"Bill and keep" is itself a mutual compensation scheme. It provides both carriers with a tangible good -- access to the other's network without cost to the originating carrier -- in exchange for the same right on the connecting carrier's network. Consistent with Section 201 of the Communications Act, both carriers receive benefits from this arrangement. The LEC gains an additional benefit because "bill and keep" satisfies its obligation for reasonable interconnection with CMRS providers, while avoiding administrative costs that would be imposed under a symmetrical or reciprocal compensation scheme.

Without a "bill and keep" scheme, CMRS carriers will be forced to pursue compensation for *all* traffic incoming from LEC and IXC providers, regardless of origination.

While LECs may argue that they are not fairly compensated under "bill and keep" because they must terminate more calls than the CMRS operator, this claim is mitigated by two factors. First, Omnipoint and other new entrants will, almost by definition, make traffic flow between CMRS operators and LECs more equal than it has been with cellular in the past. Broadband PCS, for example, will be offered at reduced prices, it will be more secure, more reliable, and include more features than cellular. Therefore, consumers are more likely to view PCS as a substitute for wireline service, thereby increasing the terminating traffic on the PCS network. The adoption of a "calling party pays" method will also help to balance the traffic flow by encouraging customers to give out their mobile phone number.[2] Second, the LEC costs of interconnecting or terminating a local call are less than that incurred by CMRS operators on a per-call basis. Therefore, the incumbent LEC receives more economic value under "bill and keep" than the CMRS operator on a per-call or per-minute basis.

The mandates of the Telecommunications Act of 1996 for reciprocal compensation, 47 U.S.C. § 251(b)(5), are also consistent with a "bill and keep" approach. In fact, the Telecommunications Act, at § 252(d)(2)(B)(i), expressly permits "arrangements that waive mutual recovery (such as bill-and-keep arrangements)," because each carrier is provided with offsetting compensation. Congress also imposed additional interconnection obligations on incumbent LECs, as compared to all other telecommunications carriers, to interconnect in a manner that is "just, reasonable, and nondiscriminatory." Id., at § 251(c)(2)(D). Because "bill and keep" bypasses many of the issues and hurdles that have traditionally impeded fair

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2 Omnipoint estimates that in the United States approximately 15 to 20% of the traffic flow is incoming to CMRS networks. In contrast, Omnipoint estimates that in countries where "calling party pays" and full mutual compensation covering both carriers' costs are accepted, the share of traffic flow incoming to CMRS is approximately 33 to 40%.

compensation, it is consistent with the requirements of the 1996 Telecommunications Act for "just" and "reciprocal" compensation.

It is also important to contrast a nationally implemented "bill and keep" scheme, where carriers receive offsetting compensation, with the current interconnection environment. In Omnipoint's experience, LECs have provided limited assurance of symmetrical or even reciprocal compensation. Some LECs, under significant pressure from regulatory authorities, have only just recently offered competing CMRS providers any form of compensation. Even those LECs, however, do not provide compensation for 100% of all incoming calls; instead, these carriers exclude from compensation calls originated from payphones, hotels, and IXCs that do not readily provide billing information. Other LECs still offer no mutual compensation for interconnecting CMRS carriers. Thus, Omnipoint and other new entrants face no assurance of mutual compensation in their license areas. This historical pattern of noncompliance with the Commission's policy requiring mutual compensation demonstrates that a mandatory "bill and keep" scheme is the only practical way to ensure reasonable and just interconnection at this time.

5. *It Avoids Issues of Potential Collusion*

With compensation arrangements, LECs have two economic incentives to raise the price of interconnection in an anticompetitive manner. First, the LEC may set high interconnection rates with its in-region cellular or PCS affiliate and force all other CMRS carriers to accept those rates. While the LEC and its affiliate may be able to afford to pay one another high interconnection rates, unaffiliated CMRS carriers suffer. In addition, the LEC and CMRS operators could collectively raise the interconnection rates and pass those artificially high rates onto the customer. With "bill and keep," however, these potentially anti-competitive effects on the market for local exchange services are avoided.

6. *It Reduces the Administrative Burdens on the FCC and the States*

With interconnection rates set at zero, the administrative burden on regulators is greatly reduced. With "bill and keep," rate complaints and proceedings to review an incumbent LEC's compliance with the Commission's mutual compensation policy are avoided. The more simplified process of negotiating interconnection -- with pricing issues removed from the process -- should result in fewer disputes on other issues, such as technical interfacing, that require government intervention. Rather, parties are more apt to be able to resolve interconnection issues without resort to government intervention.

Moreover, the number of local entrants in all markets requiring interconnection will undoubtedly double or triple (or more) in the next few years, just as budgetary constraints reduce state and federal regulators' resources. A simplification of the interconnection issues requiring regulatory oversight may well be the best way that regulators can maintain effective control over the interconnection process.

7. *It Promotes Market Entry for Small Businesses*

Section 257 of the Communications Act, enacted by the 1996 Telecommunications Act, generally obligates the Commission to encourage the entry of small businesses and entrepreneurs into the market for telecommunications services. The statute establishes a national policy in favor of entrepreneurs to promote "diversity of media voices, vigorous economic competition, [and] technological advancement." 47 U.S.C. § 257(b). The Commission is directed to eliminate its own regulations which act as market barriers to entry and to advise Congress on eliminating statutory requirements that are market entry barriers for entrepreneurs and small businesses. Id. at § 257(a) & (c).

A federally mandated "bill and keep" scheme comports with the Commission's obligations under Section 257 by helping small businesses to obtain quicker and administratively manageable interconnection with the incumbent LEC. More complicated reciprocal compensation schemes, requiring enormous information systems support and a team of settlements managers, obviously favor the large incumbent LEC. As a result, if the parties are left to negotiate an *ad hoc* compensation method, the small business will be forced to accept an inherently unfair balance of negotiating power. In contrast, "bill and keep" helps the small business entrant by mitigating the incumbent LECs' administrative advantages. In addition, the administrative simplicity allows small businesses to focus their limited resources on system build-out and marketing services.

The entry of small business competing against the incumbent LEC is not only a Commission policy goal, but, when the Commission issues hundreds of broadband PCS entrepreneur licenses, it will hopefully make small business entry a reality.[3] The long term success of these hundreds of entrepreneurs depends in significant measure on whether the Commission will assist them in breaking down barriers to entry, and "bill and keep" is a significant step in that direction.

B. "Bill and Keep" Should Apply to Transport and Tandem Switch Costs; Other Costs Should be Shared by the Connecting Carriers.

The Commission proposes to apply "bill and keep" to the costs of terminating traffic from the LEC end office or the equivalent CMRS office to the subscriber, NPRM at ¶60, while it proposes that the costs of transport to the LEC end-office would be charged to the originating carrier. The Commission proposes to permit the LEC to charge its existing tariffed rates for dedicated facilities used to carry terminating traffic to the end-office; it also requests comment on whether the existing usage-sensitive rates should apply for tandem-switched traffic using shared facilities. NPRM at ¶¶ 63-65.

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3 The Commission has consistently framed its auction preferences for small businesses as part of a larger policy to promote small business entry. "Our goals are to create significant opportunities for entrepreneurs, small businesses . . . to compete in auctions for licenses and attract sufficient capital to build-out those licenses and provide service." Fifth Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 5532, ¶ 129 (1994); Sixth Report and Order, 78 R.R. 2d 934, 935 (1995) (FCC's primary goal in modifying auction rules is to promote "rapid delivery of additional competition to the wireless marketplace by Block C licensees"); Second Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 2348, 2389 (1994) (auction preferences and licensing for small businesses are to "enable the participation of a variety of entrepreneurs in the provision of wireless services").

Omnipoint urges the Commission to apply "bill and keep" to tandem switching and transport costs to the end-office, as well. Without a comprehensive solution, the proposed scheme implements "bill and keep" only half-way, and significantly diminishes the benefits and savings to be realized. For example, the avoidance of administrative costs under a comprehensive "bill and keep" scheme is effectively undermined. The LECs' practice of non-mutual compensation can also be perpetuated through excessive transport and tandem switching costs. In addition, the administrative burden on the Commission and the states will undoubtedly rise, as the tariffing for services required for interconnection will become highly contentious. Finally, it appears that the Commission did not take into account the transport costs incurred by the CMRS operator to terminate LEC-originated traffic to the CMRS MTSO or equivalent. NPRM at ¶¶ 63-65. Just like the offsetting costs that justify "bill and keep" for end-office switching and transport to the subscriber, these transport costs of the CMRS providers offset the costs incurred by the LEC.

If the Commission decides not to require "bill and keep" for the LEC's tandem switching and transport costs, the Commission should clarify that CMRS providers have a right to full compensation from the LEC for equivalent costs. The rate of compensation for these CMRS costs should be set by the CMRS operator's wholesale rate for such services. Because CMRS providers will operate in a competitive environment for such services, these arrangements should not be subject to tariffing requirements.

Finally, the Commission should clarify that the costs of interfacing at the point of interconnection (including equipment, land, buildings, and poles), should be borne by both carriers. The LEC and the CMRS operator should share equally in the costs (based on negotiated, recurring fees, where possible) that are required to interconnect the two networks and to meet the LEC's statutory obligations.

II. THE COMMISSION HAS AUTHORITY TO ADOPT A NATIONAL, MANDATORY "BILL AND KEEP" INTERCONNECTION REQUIREMENT

The Commission can and should adopt an interim mandatory "bill and keep" compensation requirement for both interstate and intrastate traffic. Omnipoint agrees with the Commission's tentative conclusion at ¶ 111 of the NPRM that it has adequate authority under the Communications Act to adopt such a requirement.

A. PCS Is An Inherently Interstate Service That Requires a Uniform Interconnection Regime.

The regulation of broadband PCS has been crafted by both Congress and the Commission as an inherently multi-state, regional, and even national service. Flexibility to offer PCS connected to the PSTN mobile and instantaneous communications has long been the hallmark for the regulation of PCS,[4] and the regional geographic scope of all broadband PCS licensing -- both MTAs and BTAs -- emphasize that PCS is a service that is interstate, not intrastate, by nature. Disparate state regulation of interconnection will thwart fully considered federal policy objectives, and so state regulation should be preempted.

Congress directed the Commission, in re-allocating spectrum for mobile services, to "encourage competition and provide services to the largest number of people." 47 U.S.C. § 332(a)(3). Congress also directed the Commission to work expeditiously to implement the regulatory framework for rapid introduction of PCS, and "advance a seamless national network." 1993 Omnipoint Budget Reconciliation Act, § 6002(d); H.R. Rep. No. 103-111, at 261.

Multi-state MTA and BTA geographic regions for broadband PCS were established by the Commission "to promote the rapid deployment and ubiquitous coverage of PCS . . .

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4 Notice of Inquiry, GN Dkt. No. 90-314, 5 FCC Rcd. 3995, 3996 (1990).

follow[ing] the natural flow of commerce."[5] The Commission rejected the cellular MSA and RSA service regions for PCS because "[t]he ten year history of the cellular industry provides evidence generally that these service areas have been too small for the efficient provision of regional or nationwide mobile service." The Commission explained that the efficiencies to be gained from regional providers was intended to "spur competition" and "alleviate the cellular headstart advantage" faced by PCS new entrants. Id. at 4987-88. In the Second Report and Order,[6] the Commission intended for the large MTA geographic areas to "facilitate regional and nationwide roaming; [and] allow licensees to tailor their systems to the natural geographic dimensions of PCS markets." Significantly, 43 of the 49 MTA license areas set by the Commission include the territory of more than one state.

Even after choosing multi-state license areas, the Commission adopted a simultaneous, multi-round auction method for broadband PCS licenses because it recognized the efficiencies that PCS operators could achieve through regional systems combining MTA and BTA areas across many states. "[T]he values of most broadband PCS licenses will be significantly interdependent because of the desirability of aggregation across . . . geographic regions."[7] The results of the Block A and B PCS auctions provide compelling evidence supporting the Commission's general policy for efficient PCS systems on a scale that extends far beyond any single state boundaries.

In the context of PCS, control over interconnection rates by disparate state commissions is simply not practicable, and stands to undermine the very nature of the service itself. First, in many of the largest metropolitan areas of the country today, such as New York, Chicago, and

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5 Memorandum Opinion and Order, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4986 (1994).

6 9 FCC Rcd. 2348, ¶ 74 (1993).

7 Fifth Report and Order, 9 FCC Rcd. 5532, ¶31 (1994).

Washington, D.C., mobile users can and will originate traffic in one state and, in the course of a single call, enter two or three other states. Even if a method to separate the usage in each state could be developed, it is an incredible expenditure of resources that effectively hinders the very mobility of PCS. Moreover, there are no apparent public benefits to be derived from such a complex, splintering of a single call. Second, the Commission's licensing areas effectively mandate a single PCS provider to a multi-state area (*e.g.*, the New York MTA serves New York, Connecticut, New Jersey, Vermont, and Pennsylvania), but disparate state interconnection regimes and state enforcement of interconnection obligations will undoubtedly stall provision of service and cause uneven deployment throughout the country. In fact, several states have not even addressed the regulatory treatment of PCS, let alone considered how PCS providers will be afforded reasonable interconnection. Without an immediate, interim resolution of the CMRS-LEC interconnection issue, such as "bill and keep," PCS operators simply cannot deploy effectively. State commissions cannot provide such an immediate solution, or a uniform approach for PCS providers operating many states, and so PCS cannot afford to wait for the state commissions.

In sum, an array of different state interconnection regulations, or no interconnection regime at all, only promises to hamstring PCS operators from realizing the efficiencies sought by the federal licensing and auction scheme. The Commission needs to preempt state regulatory control over interconnection in order to preserve the federal policies underpinning PCS.[8]

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8 *See*, Public Utilities Comm. of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1985) (court upholds Commission's preemption of state order that would have interfered with federal policy for interstate access).

B. The 1993 Budget Act Encourages Regional PCS Networks By Preempting State Control of Interconnection Rates.

In 1993, Congress modified the Communications Act to prohibit state regulations that impede the rapid introduction of competitive mobile services, and obligated the Commission "to establish a Federal regulatory framework to govern the offering of all commercial mobile services." H.R. Conf. Rep. No. 103-213, at 490.

CMRS-LEC interconnection was one of the central issues that Congress established for federal regulatory control. Section 332(c)(1)(B) provides the Commission with exclusive authority to order carriers to interconnect with a CMRS provider, upon "reasonable request." As explained by the House Report, interconnection is an essential element of the 1993 federal policy to promote CMRS and it is a burden placed squarely on the Commission: "The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network." H.R. Rep. No. 103-111, at 261.

Moreover, Congress prohibited the states from regulation of rates charged by CMRS providers and prohibited any state regulation that operates as a market entry barrier to CMRS. The legislative history makes clear that *all* state rate regulation, including regulation of rates charged by CMRS providers to interconnect with the LEC, is prohibited. *See*, H.R. Rep. No. 103-111, at 260 ("to foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure, new section 332(c)(3)(A) also would preempt state rate and entry regulation of all commercial mobile services") *and*, id. at 261 ("state or local government cannot impose rate or entry regulation on . . . commercial mobile services"). Because LEC interconnection rates would have to be recovered by the CMRS operator through the rates to its subscribers, there is little sense in distinguishing interconnection rates charged *to a CMRS operator* from rates charged *by a CMRS operator*; states are preempted from regulating either one.[9]

Other provisions of the Communications Act provide further support for the Commission's authority to impose a national interim "bill and keep" requirement. Because state-by-state interconnection regimes (or, in some states, the total lack of an interconnection regime for PCS operators) would significantly stifle the effective and timely entry of PCS, the Section 332(c)(3) prohibition against state barriers to market entry preempts state interconnection regulations.[10] Instead, Section 332(c)(1)(B) authorizes the Commission to implement a national policy because "commercial mobile service interconnection with the public switched network will be an essential component in the successful establishment and growth of CMRS offerings." Second Report and Order, at ¶ 235.[11] In addition, forcing PCS operators to comply with

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9 While Section 332(c)(3) literally prohibits state regulation of interconnection "rates charged by" CMRS providers, it is untenable that this prohibition covers only the rates for CMRS-to-LEC traffic, leaving the states free to set LEC interconnection rates. Splitting regulatory jurisdiction so that the FCC regulates CMRS rates and the states regulate LEC rates for the same interconnection creates an unworkable process that cannot ensure "mutual compensation;" the statute should not be construed to reach such a result and there is no evidence to suggest the Congress intended such a result. Instead, the statute provides for state regulation of rates, including interconnection rates, only *after* petition to the FCC for authority to regulate, according to Section 332(c)(3)(A).

10 In fact, under Section 332(c)(3), the only matters left to the States are "other terms and conditions" of service. The House Report explains that the state role is limited to matters not addressed by the federal policy, such as "customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (e.g., zoning); transfers of control; bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis . . . ." H.R. Rep. No. 103-111, at 261.

11 The Commission's preemptive authority was also made explicit by the 1993 amendment to Section 2(b) of the Communications Act, which extends the Commission's jurisdiction to intrastate CMRS communications, as prescribed in Section 332.

different state-by-state regulations would also frustrate Congress' goals for regulatory parity, as enacted at 47 U.S.C. § 332(c)(1).

In sum, the provisions of Section 332 provide the Commission with authority to set interconnection rates, and the authority to handle disputes between CMRS and LEC providers as they arise.

C. The 1996 Telecommunications Act Supports the Commission's Authority to Adopt a National "Bill and Keep" Approach.

The Telecommunications Act of 1996 retains the Commission's authority over CMRS-LEC interconnection that was carefully laid down in 1993. Perhaps the simplest and best evidence of this is that Congress chose to make no changes to the preemption and interconnection statutory provisions enacted in Sections 332 and 2(b). Obviously, Congress found no inconsistency with the interconnection provisions of the 1996 Act (Sections 251 and 252) and the CMRS provisions prohibiting state regulation of CMRS interconnection rates and providing the FCC with authority to resolve CMRS interconnection disputes.

An analysis of Sections 251 and 252 with respect to CMRS demonstrates that there is not, in fact, any inconsistency with Section 332. Section 251 directs the Commission to implement the incumbent LECs' duty to provide interconnection "on rates terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2)(D). This rulemaking authority permits the Commission to adopt a scheme that best implements Congress' public policy goals for CMRS -- rapid deployment and nationwide seamless network. "Bill and keep" for CMRS interconnection not only implements those goals but, given the history of discriminatory LEC treatment toward CMRS, it allows the Commission to implement the 1996 Act's mandate for "just" interconnection. An interim "bill and keep" method is also consistent with the overarching policy goal of the 1996 Telecommunications Act to promote competition for local exchange services.

If there was any doubt that "bill and keep" meets the demands of an acceptable reciprocal compensation scheme, the 1996 Act explains that "bill and keep" arrangements are a permissible means of "mutual recovery of costs through the offsetting of reciprocal obligations." 47 U.S.C. § 252(d)(2)(B)(i). Finally, the 1996 Congress explicitly retained the preemption provision of Section 332(c)(3). 47 U.S.C. § 253(c).

Given the interstate nature of PCS, the Commission's continuing role in the rapid introduction of PCS, and the Commission's explicit preemption authority under Section 332 of the Communications Act, the Commission has authority to adopt a national, mandatory "bill and keep" requirement for CMRS-LEC interconnection.

III. THE CHOICE OF LONG-TERM MUTUAL COMPENSATION SHOULD BE DEFERRED UNTIL THE COMPETITIVE LANDSCAPE IS ESTABLISHED

During the initial period of "bill and keep," the Commission, CMRS providers, and LECs will be able to better ascertain its true efficiency, and assess the benefits and costs of replacing it with another long-term reciprocal compensation scheme. Moreover, once a number of CMRS providers have entered the market without the hindrance of excessively high interconnection rates, the Commission can determine the actual interconnection cost, and better evaluate whether a move to another scheme of compensation would create an unnecessary regulatory burden on LECs and CMRS providers.

The Commission can use this interim period to consider whether "bill and keep" or some other compensation method is better suited to meet the realities of carrier's costs of terminating other carriers' traffic. However, to attempt any other cost recovery method other than "bill and keep" at this time would be problematic for several reasons. First, another scheme will require economic modeling, forecasting, and very contentious cost studies, which may take years to be developed and finalized. Meanwhile, PCS and other CMRS operators need a functional method of exchanging traffic *today* to be commercially viable and compete in the marketplace. An interim "bill and keep" solution is better than the alternative status quo which greatly disadvantages CMRS competition. Second, the competitive dynamics of telecommunications services, especially at the local level, will change dramatically in the next few years. To base an interconnection policy for the next decade based on past, historical cost data and traffic patterns would be a grave mistake. The only prudent course is to measure costs and empirical data in the new competitive environment, over the next several years, and then develop a long-term interconnection policy based on that data.

IV. <u>PCS OPERATORS ARE ENTITLED TO CHARGE IXCs FOR ACCESS</u>

Omnipoint supports the Commission's tentative conclusion at ¶ 116 of the NPRM that CMRS operators should be entitled to receive access charges from IXCs and LECs terminating interexchange traffic on the CMRS network.

CMRS providers, like the incumbent LECs, need to recover from IXCs a proper portion of the costs of operating the CMRS network. Unlike the LEC, who is compensated for its provision of access by gaining rights to access the CMRS network, the IXC offers no compensation to the CMRS provider for the use of its network other than through access charges. These rates should be left to private negotiation between the CMRS and long-distance carriers, and the CMRS carriers should not be saddled with tariffing obligations. Where interstate traffic is terminated on the CMRS network through interconnection with the LEC network, the networks of both CMRS and LEC providers are used to terminate the interstate traffic and both providers should have a right to a portion of the access fee charged by the LEC. In those cases, the CMRS and LEC provider should negotiate for an equitable division of the access charge.

CONCLUSION

For the foregoing reasons, Omnipoint urges the Commission to implement a "bill and keep" requirement to govern LEC-CMRS interconnection.

Respectfully submitted,

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